

capable of meeting a broad range of user needs will become even more pronounced. Creation of a competitive market should lead to deployment of more -- and better quality -- inside wiring. This will further the development of the National Information Infrastructure, thereby enabling consumers to receive an ever-increasing number of services at the home.

3. FCC LEGAL AUTHORITY

Under the Communications Act, the Commission has ample legal basis to authorize a subscriber right to control existing cable inside wiring, to purchase that wiring upon termination of the cable service, and to purchase new or substantially modified wiring.

a. SECTION 16(d) OF THE CABLE ACT OF 1992

Section 16(d) of the Cable Act of 1992 requires the Commission to "prescribe rules concerning the disposition, after a subscriber . . . terminates service, of any cable [wiring] installed by the cable operator within the premises of such subscriber."⁷⁶ The House Committee Report explained that this provision is intended to "enable consumers to utilize [their cable inside wiring] with an alternative multichannel video delivery system."⁷⁷ In the *Cable Home Wiring* proceeding, the Commission adopted rules designed to implement this directive. These rules,

⁷⁶ 47 U.S.C. § 544(i).

⁷⁷ H. R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992).

however, address only the specific issue mandated by the legislation: the post-termination purchase of cable wiring "on the premises of the subscriber."⁷⁸

During the course of the *Cable Home Wiring* proceeding, several commenters urged the Commission to adopt rules providing that, at the time of termination, cable subscribers in multiple dwelling unit buildings be allowed to purchase dedicated wire located outside the subscriber's premises, but within the subscriber's building.⁷⁹ At that time, the Commission recognized that "broader cable home wiring rules could foster competition."⁸⁰ However, "because of the time constraints . . . required by the Cable Act of 1992," the Commission declined "to address such rule proposals in [that] proceeding."⁸¹

Section 16(d) establishes the *minimum* action that the Commission must take to promote competition among multiple network service providers. The provision does not address -- much less limit -- Commission authority to adopt broader rules intended to promote competition.⁸² Indeed, at the time the Cable Act

⁷⁸ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring*, Report and Order, 8 FCC Rcd 1435 (1993) ("*Cable Home Wiring Order*"); *Cable Home Wiring Reconsideration Order*.

⁷⁹ *See, e.g.*, Liberty Cable Company, Inc. Petition for Reconsideration and Clarification at 1 (filed Apr. 1, 1993); Response of WJB-TV Limited Partnership to Petition for Reconsideration at 3 (filed Apr. 15, 1993).

⁸⁰ *Cable Home Wiring Order*, 8 FCC Rcd at 1436.

⁸¹ *Id.*

⁸² *See, e.g.*, H. R. Rep. No. 628 at 118 ("This section does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service.").

was adopted, the Senate Commerce Committee expressly directed the Commission to take action beyond the confines of Section 16(d). The Committee Report noted that "[t]he FCC permits consumers to remove, replace, rearrange, or maintain telephone wiring inside the home even though it might be owned by the telephone company. This," the Committee stated, "is a good policy and should be applied to cable."⁸³

The Commission itself has observed previously that nothing in the statute precludes it from taking action more sweeping than Section 16(d) to promote competition. In fact, the Commission has recognized that, in establishing cable inside wiring rules, it is obligated to "consider broad telecommunications issues which extend beyond the 1992 Cable Act . . . to promote consumer choice and competition" among multiple service providers.⁸⁴ Title I of the Communications Act of 1934 and Section 304 of the Telecommunications Act of 1996 provide authority for the Commission to take the necessary action.

**b. TITLE I OF THE COMMUNICATIONS
ACT OF 1934**

Title I of the Communications Act grants the Commission "ancillary authority" to take "all regulatory actions necessary 'to ensure the achievement of the Commission's statutory responsibilities.'"⁸⁵ In the *Telephone Inside Wiring*

⁸³ See S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991).

⁸⁴ *Cable Home Wiring Reconsideration Order* at ¶ 8.

⁸⁵ *Capital Cities v. Crisp*, 467 U.S. 691, 700 (1984) (quoting *FCC v. Midwest Video Corporation*, 440 U.S. 689, 706 (1979)).

proceeding, the Commission relied on its Title I authority to permit customers to remove, replace, rearrange, and maintain inside wiring owned and installed by the telephone company and to require the competitive provision of inside wiring.⁸⁶

In the present proceeding, Title I provides the Commission with authority to grant users the right to control cable-system-owned inside wiring. As explained above, cable operators can use their control of inside wiring to impede competition by rival service providers. Providing a subscriber right to control cable-system-owned wiring is necessary to fulfill the Commission's responsibility -- under Title VI -- to "increas[e] competition and diversity in the multichannel video programming market . . . and to spur the development of communications technologies."⁸⁷ Taking this action also is necessary to fulfill the Commission's responsibility, specified in Section 7 of the Communications Act, to "encourage the provision of new technologies and services to the public."⁸⁸

⁸⁶ See *Telephone Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1195. See also *Telephone Inside Wiring Second Report and Order*, 59 Rad. Reg.2d (P&F) 1143 at ¶ 57 (1986).

⁸⁷ 47 U.S.C. § 548.

⁸⁸ 47 U.S.C. § 157. As was the case with telephone inside wiring, creating a user right of access to cable-system-owned cable inside wiring will create no Fifth Amendment "takings" problem. In the *Telephone Inside Wiring* proceeding, the Commission made clear that -- notwithstanding customer control -- telephone companies that had yet to recover the cost of inside wiring (either through amortization or expensing) could continue to assess charges necessary to do so. See *Telephone Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1195 n.74. Precisely the same approach should be adopted in the cable context. Of course, no Fifth Amendment issue is raised by allowing a customer to *purchase* inside wiring from a cable system.

c. **SECTION 304 OF THE
TELECOMMUNICATIONS ACT**

The recently enacted Telecommunications Act of 1996 further bolsters the Commission's authority to authorize users to purchase and maintain their cable inside wiring. Section 304 requires the FCC to ensure the "commercial availability" of "equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems."⁸⁹ As explained above, this provision requires the unbundling of all premises-based equipment used in connection with cable transmission facilities.⁹⁰ Cable inside wiring constitutes "equipment" used "to access" cable systems. Therefore, pursuant to Section 304, the Commission is obligated to adopt regulations that will ensure that it is "commercially available."

Classification of cable inside wiring as "equipment" is consistent with the approach taken by the Commission in the *Cable Rate Order*.⁹¹ The Cable Act of 1992 required the Commission, absent a finding of effective competition, to adopt rate regulation for "equipment used by subscribers to receive the [cable]

⁸⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, § 304 (creating new Section 629 of the Communications Act of 1934).

⁹⁰ *See supra* § II.A.3.a.

⁹¹ *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5805-06 (1993) ("*Cable Rate Order*").

basic service tier."⁹² In the *Cable Rate Order*, the Commission concluded that, in addition to the types of equipment expressly identified in the statute, inside wiring constituted equipment used to receive basic tier cable service.⁹³ The same approach is appropriate in the present situation.

B. THE COMMISSION CAN ALLOW SUBSCRIBER CONTROL OVER CABLE INSIDE WIRING WHILE PREVENTING SIGNAL LEAKAGE AND PRESERVING SIGNAL QUALITY

As the Commission observes in the *Notice*, because cable systems operate over the same frequencies as air traffic control and police and fire safety communications, the Commission's rules must safeguard against harmful interference from cable signal leakage.⁹⁴ The Commission also has recognized the need for signal quality standards to ensure that subscribers receive quality transmission service. Compaq believes that the Commission can safeguard both of these goals, while permitting subscriber control over cable inside wiring.

1. CABLE SIGNAL LEAKAGE

Current Commission rules set forth strict offset and leakage requirements to protect over-the-air public safety communications from cable service interference.⁹⁵ At the present time, the rules impose on cable system operators the

⁹² 47 U.S.C. § 543(b)(3).

⁹³ See *Cable Rate Order*, 8 FCC Rcd at 5805-06.

⁹⁴ See *Notice* at ¶ 20.

⁹⁵ See 47 C.F.R. §§ 76.605(a) & 76.610-76.617.

responsibility of "detecting and eliminating any signal leakage" that would cause interference "outside the subscriber's premises" or produce cable system leakage in excess of the established limits.⁹⁶

As explained above, Compaq proposes to transfer control of cable inside wiring from the cable system to the subscriber. Compaq believes that, once subscribers are given control over this wiring, they should be required to maintain and use it in a manner that is consistent with the Commission's rules designed to prevent signal leakage.⁹⁷ At the same time, however, Compaq believes that cable operators should continue to bear the ultimate responsibility to detect and eliminate cable leakage during the period in which they provide service.⁹⁸ In order to fulfill its responsibility, the cable service provider should have a right of access to subscriber wiring.⁹⁹

This proposal is consistent with the approach that the Commission has taken in those situations in which cable subscribers currently connect their own equipment to a cable system.¹⁰⁰ Part 76 of the Commission's rules requires

⁹⁶ 47 C.F.R. § 76.617.

⁹⁷ Many consumers, presumably, will contract with another entity -- either the cable system or an independent contractor -- to perform any necessary wiring maintenance.

⁹⁸ See 47 C.F.R. § 76.617.

⁹⁹ See Comments of Tele-Communications, Inc. at 5 (filed Dec. 1, 1992).

¹⁰⁰ See *Amendment of Parts 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems*, Memorandum, Opinion and Order, 3 FCC Rcd 6491, 6493 (1988) ("This rule [47 C.F.R. § 76.617] is intended to set forth the

that, in this situation, the subscriber maintain such equipment in accordance with the emissions requirements contained in Part 15 of the Commission's rules.¹⁰¹ At the same time, where excessive leakage occurs, the Commission's rules require cable operators to discontinue service to the subscriber until the problem is corrected.¹⁰²

2. SIGNAL QUALITY STANDARDS

The Commission's rules also require that cable operators deliver a signal of a specified quality to the subscriber's terminal.¹⁰³ The Commission seeks comment on whether signal quality standards should be extended, and, if so, at what point -- the demarcation point or the subscriber's terminal equipment -- the signal quality should be measured.¹⁰⁴

Compaq believes that signal quality standards are necessary to ensure that subscribers receive the transmission that they expect. With advancements in technology and countless broadband services emerging, the Commission should

responsibilities of cable subscribers and operators with respect to signal leakage resulting from the connection of subscriber-owned [cable system terminal devices] to the cable system."). With a consumer market for cable-related CPE emerging as a result of the cable equipment unbundling provision of Section 304 of the Telecommunications Act of 1996, *see supra* § II.A.3.a, this safeguard will become even more important.

¹⁰¹ *See* 47 C.F.R. § 76.617.

¹⁰² *Id.*

¹⁰³ *See* 47 C.F.R. § 76.605.

¹⁰⁴ *See Notice* at ¶ 25.

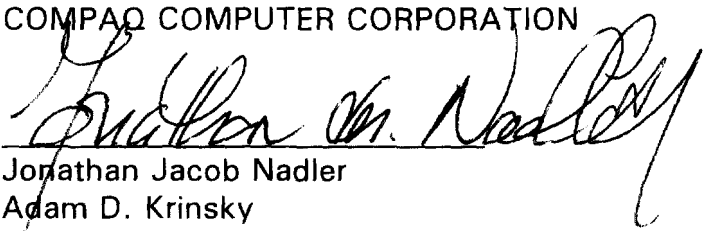
make certain that the quality of cable wiring or network termination does not prevent consumers from enjoying the benefits of the broadband technology. To do so, the Commission should continue to hold cable operators responsible for signal quality delivered to subscribers' equipment. The Commission, however, should provide cable operators with a right of access to cable inside wiring to investigate any signal quality transmission problem. If no problem exists on the user's side of the demarcation point, however, the cable operator should remain responsible for resolving the signal quality problem.

CONCLUSION

This proceeding offers the Commission an opportunity to ensure that consumers can choose the equipment, services, and distribution networks that best meet their needs. In order to achieve this goal, the Commission should extend the pro-competitive policies governing telephone customer premises equipment -- including unbundling, non-discriminatory interconnection, and network disclosure -- to cable CPE. The Commission also should ensure that cable subscribers, like telephone customers, have the ability to control in-building wiring dedicated to their use.

Respectfully submitted,

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